

**Manatee Protection Plan Review Committee (MPPRC)**  
**Minutes of February 24, 2009**

**Committee Attendees:** Brett Bibeau; T. Spencer Crowley III; Judith Futerfas; David Gardner; Lynda Green; Bob Karl; Alberto Lamadrid; Mark Lewis; Kate L. Mansfield, Ph.D.; Robert Moser; Manny Prieguez (Chair); Dick Townsend (Vice Chair); Julia Zaias, Ph.D.

**County Staff Attendees:** Lee Hefty (DERM); Susan Markley, Ph.D. (DERM); Craig Grossenbacher (DERM); Lisbeth Britt (DERM); Molly Messer (DERM); Nancy Revilla (DERM); Sheri Kempinski (DERM)

**Other Attendees:** A sign in sheet was provided for public sign in.

**1. Welcome, Introductions, and Review of Agenda:** A quorum was established. The meeting was called to order by Chairman Manny Prieguez at 12:37 P.M. The meeting was recorded on video. The meeting agenda is made a part by reference hereto.

The Chair recognized member Bob Karl, who had not yet had the opportunity to present his ideas for updates to the current MPP. Mr. Karl indicated that, though he has missed the last several meetings due to work commitments, he has reviewed the meeting minutes. He reiterated the points he had previously submitted in writing and urged the MPPRC to redirect its focus to protecting the manatee, rather than expansion of development. He emphasized that the MPP would be more effective if clarified using plain language, straightforward statistics and illustrations. He also suggested that the committee find ways to support greater enforcement efforts.

**2. Update of data collection efforts:** Dr. Markley from DERM presented a slide presentation and other information to update the committee:

- The Mote Marine Lab boater use study is on track and on time. The 3rd quarterly report has been received and is under review by DERM. Upon acceptance, the report will be provided to the MPPRC.
- A copy of a FWC press release on the statewide manatee counts for the week of January 19, 2009 and a fact page on synoptic survey methods were provided to the members. A record high number of manatees were counted statewide, in part attributable to favorable observation conditions, with cold weather causing animals to congregate in warm water areas. Dr. Markley clarified that the statewide survey is not a population estimate but does provide information about what the animals are doing, particularly in the winter.
- Eighty-one animals were counted in Miami-Dade on the January 23, 2009 survey, predominantly in the Miami River and Coral Gables Waterway, and other tributaries. Dr. Markley stated that this is not a record number for Miami-Dade County, but may be attributed to the manatees behavior during extremely cold conditions of aggregating at the power plants in Broward and Palm Beach counties, where record numbers of manatees were observed. Dr. Markley then discussed more detailed statistics about the specific locations where manatees were seen, including the Miami River and Coral Gables Waterway. She also showed photos taken during the survey, emphasizing the numbers of animals and sensitive behaviors observed in the tributaries used by manatees in cold weather.

- Three manatee carcasses were recovered in Miami-Dade since January 1, 2009. Two were recovered in the Miami Beach/ Government cut areas with cause of death attributed to vessel strikes and one dependent calf was found near Black Point that died due to cold stress. Dr. Markley discussed the injuries to the manatees killed by vessel strikes and indicated that based on the significance of the injuries, it is likely that both manatees died instantly, and at least one of the deaths was likely associated with a vessel with a large propeller. She noted that even though boat traffic is lowest in the winter months, even the modest amount of vessels activity can cause deaths since there are many times more manatees present.

Lynda Green reported that she had observed vessel traffic and speed zone violations during the recent Miami Boat show, and suggested this may represent a risk to manatees. Mr. Lamadrid offered his riverfront property for ground truthing aerial animal counts by the County staff.

**3. Discussion of existing facility definition:** DERM provided to the committee members and the public a handout formatted as a list of bulleted concepts for discussion of the “existing facility” definition. A copy of this document is attached and hereby incorporated into the minutes. Chair Prieguez asked that DERM explain how the listed concepts compare to language in the current plan. Dr. Markley and Mr. Hefty explained that many of the listed concepts provide background of the underlying rationale for allowing facilities that have been traditionally operating in compliance with regulations to continue, or to be repaired or rebuilt, provided there is no change in the number or types of vessel activities that would result in increased potential impacts to manatees. Many of the listed concepts are not a change to the current plan, but rather a response to the need to clarify the policy regarding existing facilities, since the 1995 plan that is currently in effect does not provide background or details about the policy. Dr. Markley emphasized that the 1995 Manatee Protection Plan policy that allowed facilities that had been operating to continue or rebuild was a compromise, based on fairness to owners, and was not a biological determination that the level of impacts associated with the use of those facilities was acceptable to manatees or their habitat. She noted that the most substantive change or modification is a proposal to eliminate the fixed date of October 28, 1984 as a reference point for defining historic uses that qualify as “existing”, and replace it with a “rolling date” that is tied to the point in time when an application for rebuilding or repair is made. No specific “rolling” time frame was proposed. However, a rolling date could help to address the difficulty in determining the numbers and types of vessels that may have used a facility in the distant past, and also would be more consistent with the assumption that rebuilding of a facility in operation does not represent an increased impact to manatees. A discussion ensued with DERM staff responding to questions relating to a number of the discussion points. Several committee members expressed support for or interest in the concept of a rolling date, and there were also suggestions for further clarification of how past uses may be evaluated when the types of vessels change or when a facility is not in continuous operation.

**4. Discussion of concepts for slip transfers:** DERM provided to the committee members and the public a handout formatted as a list of bulleted concepts for discussion of slip transfers. A copy of this document is attached and hereby incorporated into the minutes. Dr. Markley summarized the overall rationale, explaining that it is based on the principles of mitigation to offset adverse impacts of increasing the slips or boating activities within areas that are essential manatee habitats and which are not recommended for expansion. In such a circumstance, it may be possible to mitigate for the increase in slips or boating activity by decreasing an equivalent amount and type of slips or activity. To assure that there would be no net increase in manatee impact, this procedure would involve removing or eliminating the use of slips or berths at one location, and transferring them to another. Also, slips should only be transferred from a

more sensitive manatee habitat to a less sensitive site. To assure traditional riparian rights and fairness, owners of both the donor site and receiving sites would have to agree to the transfer. The discussion proposal also suggested that some "base" level of vessel use or numbers of slips should remain and not be available for transfer. A discussion ensued with DERM staff responding to questions relating to a number of the concept points. Several committee members had questions related to the determination of the amount of slips available for transfer, geographic limits for transfer, and the value of slips or berths to be transferred. In response to some comments and inquiries about identification of available slips, DERM staff stressed that it is not possible to define in advance slips that are available, since each case depends on complete understanding of the types and uses of slips at both the donor and receiving property, potential impacts to manatees, and other regulations. In response to questions, Dr. Markley remarked that some of the bullets are intended to address concerns the State of Florida has raised in the past in an effort to develop a slip transfer concept that may potentially be supported by the State as a component of an updated MPP. Several specific comments related to the list of facilities included in the 1995 MPP as Appendix D. Dr. Markley reminded the committee that this list is an inventory of facilities that held DERM operating permits in 1995, and the number of slips reported at that time, but is not a representation of the maximum number of slips that may be allowed at a particular location.

## **5. Public Comment**

**Orin Black:** Mr. Black expressed concern about the use of a "rolling date" for defining existing facilities, since he believed that this might result in "sunsetting" of slips that had been in use historically, but had not actually been used in the more recent past. He also noted it is difficult to predict the economic or market value of slips or berths, especially if supply is limited. Mr. Black stated his belief that the 5<sup>th</sup> Amendment to the Constitution guarantees access to private property, and riparian rights.

**6. Review of draft minutes of January 26, 2009:** Chair Prieguez asked whether the January minutes required any discussion. Lynda Green made a motion to accept the meeting minutes as drafted. Dr. Mansfield seconded the motion. The motion passed unanimously.

Mr. Bibeau then stated that he had reviewed a copy of the Miami-Dade County State legislative request package, and believed that the recommendation to increase penalties for violations of manatee protection zones had not been included. He expressed concern that the resolution of the Board of County Commissioners had not been addressed. Chair Prieguez suggested additional staff review of the issue.

**7. Proposed date for next regular meeting:** Friday March 27, 2009 from 12:30 P.M. - 4:30 P.M. The meeting adjourned at 4:15 P.M.

## CONCEPTS FOR “EXISTING FACILITY” DISCUSSION

- It is not the intention of the Manatee Protection Plan to impose new limitations on the continuing operation of facilities already operating lawfully, even if the facility occurs within sensitive manatee habitat.
- It is assumed that the renovation, repair, or reconfiguration of berths or mooring structures at a facility or site that is lawfully in use does not constitute a new or increased impact on manatees, provided that the number and types of vessels using the facility and frequency of vessel activities remains substantially the same.
- There may be circumstances, such as natural disasters, fire, or financial matters, that temporarily render a marine facility inoperable. Such facilities should be allowed to rebuild, even if the facility occurs within what is now known to be sensitive manatee habitat.
- A lawfully operating marine facility at a particular site should be permitted to continue operation, undergo repairs and renovation, change ownership or business model so long as the number and types of vessels using the facility does not substantially change.
- A berthing or mooring facility that has been constructed or operated without required approvals or in violation of regulations should not receive the same consideration as those that remain in compliance, and may not necessarily be allowed to rebuild or continue operations as in the past.
- These concepts are based on principles of fairness and traditional uses of waterfront property, not a biological determination that types or numbers of vessel impacts associated with those facilities represent an “acceptable” level of impact on manatees.
- In order to implement these concepts, it is necessary to determine the number, type, and frequency of vessel uses associated with a site at the time of permit approval.
- It has become increasingly difficult to objectively determine past number, type, and frequency of vessel use at sites that have not been in operation for extended periods of time, or where there are no remaining functional berthing or mooring structures.
- Vessel trips to and from sites located in sensitive manatee habitat, but where no vessel use or functional berthing or mooring structures have been in place at any time over the recent past represent potential increases in impacts to manatees.
- *An “existing marine facility” is one that is currently operating lawfully, or has been in use and possessed all required regulatory approvals at any time during the recent past.*
- A “rolling date”, such as “{X} years prior to application for construction or operation” would allow for rebuilding or renovation of berthing or mooring facilities at sites with *bona fide*, lawful traditional vessel uses, but provide a more practical objective time frame for determining the nature of the past vessel use. Continuous operation, or continuously active operating permits, during this defined period would NOT be required.
- Sites that have had no vessel use or functional berthing or mooring structures at any time during this defined period would not be considered to be “existing facilities”, and would be subject to manatee protection facility siting criteria for new or expanded facilities.

## CONCEPTS FOR SLIP TRANSFER DISCUSSION

- Slip transfer would serve as a form of mitigation to compensate for the potential impacts to manatees from proposed new operations or expansion of marine facilities in sensitive habitats above the guidelines recommended for manatee protection.
- To assure no net increase in impact to manatees, the type and frequency of vessel use associated with the slips removed (transferred) from a donor site must be equivalent to the type and frequency of use at the receiving site.
- Slip transfers as a form of mitigation to reduce potential impacts to manatees only have the ability to offset potential impacts if they represent an actual reduction in use of slips at the donor site.
- To assure no net increase in impact to manatees, slips should not be transferred from one tributary to another or from one geographic area to another. For example, for a project on the Miami River, both the donor and recipient sites should be located on the River; for a project in the 79<sup>th</sup> Street Causeway basin, both the donor and recipient sites should be located within this basin.
- Only slips with all required approvals should be eligible for transfer. Illegal or unauthorized docking should be ineligible for transfer.
- Dry or wet berths should be considered for transfer.
- Transfers should require the consent of the property owner(s) involved (donor and receiving properties) and restrictive covenants running with the land in favor of Miami-Dade County should be required on the donor and recipient sites.
- In order to preserve riparian property rights and to prevent net reduction of waterfront access sites, not all existing slips should be allowed to be transferred away from a given donor site. Only slips that are present in excess of the recommended base density of the MPP for the donor site should be eligible for transfer.
- Within cold weather aggregation areas such as the Miami River, Little River, Coral Gables Waterway etc, slips to be transferred must be located further from (or equidistant to) Biscayne Bay than the proposed recipient site in order to qualify as donor slips in order to prevent increased potential of manatee/vessel travel pattern overlap.
- Slips located in areas recommended for expansion of commercial marinas, dry storage, transitory docks, boatyards, ramps, or large vessel (>100') berthing under the MPP should not qualify as donor slips.
- Slip transfers should only be allowed if all federal, state, and local approvals at the receiving site are obtained for the proposed work including all requirements for transfer.
- A mechanism could be created to also facilitate transfers to or from properties that do not require a construction permit from DERM.
- A donor slip should be eligible for transfer once; subsequent transfers from the recipient site to other sites should not be allowed.